

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KHONESAVANH PHETPRIYAVANH**  
Claimant

**APPEAL NO. 12A-UI-11541-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 08/19/12  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 19, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 22, 2012. The claimant participated personally. The employer participated by Rebecca Fisher, the human resources generalist. The record consists of the testimony of Rebecca Fisher and the testimony of Khonesavanh Phetpriyavanh.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a casino. The claimant was hired as a full-time table games dealer on September 18, 2006. The claimant's last day of work was August 16, 2012. He was suspended pending an investigation and then terminated on August 22, 2012.

The incident that led to the claimant's termination occurred on August 15, 2012. The claimant had come to relieve another dealer. The proper way to relieve a dealer is to tap on the shoulder. The claimant punched the dealer in the back rib area. The person who was punched later had to go home because his back hurt.

The employer has a zero-tolerance policy for violence in the workplace. The claimant was aware of this policy.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has a material interest in providing a safe workplace for all employees. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. Even the claimant admitted that he hit the other dealer in the back with a doubled up fist. He called it "horseplay" and said it was not violence. Horseplay can indeed be violence and in this case, the claimant used enough force that the other employee had to leave early because his back hurt. The administrative law judge concludes that the claimant engaged in conduct that breached his duty of geniality and civility and that he violated the employer's policy on violence in the workplace. This is misconduct. Benefits are denied.

## DECISION:

The decision of the representative dated September 19, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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